

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of)	WT Docket No. 03-66
the Commission's Rules to Facilitate the)	RM-10586
Provision of Fixed and Mobile Broadband Access,)	
Educational and Other Advanced Services in the)	
2150-2162 and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission's Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service To Engage)	
In Fixed Two-Way Transmissions)	
)	
Amendment to Parts 21 and 74 of the)	WT Docket No. 02-68
Commission's Rules With Regard to)	RM-9718
Licensing in the Multipoint Distribution)	
Service and in the Instructional Television)	
Fixed Service for the Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development)	
Of Secondary Markets)	

**COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ submits
these comments in support of petitions for reconsideration of certain actions taken in the

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return

Report and Order and Further Notice of Proposed Rulemaking, released July 29, 2004 in the above-referenced proceeding. Specifically, NTCA supports those petitioners who request that the Commission reconsider its decision not to adopt a mechanism by which qualifying Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS)² video operators may automatically “opt-out” of the Commission’s mandated transition to a new band plan and regulatory regime.³

NTCA recognizes and supports changes to the MDS/ITFS band plan to permit new and innovative uses for this valuable spectrum. However, the rules promulgated by the Commission dealt a severe and unnecessary blow to rural multichannel video programming distributors by failing to adopt a provision under which operators may “opt-out” of a transition to the new band plan.

The Commission was presented with a well-reasoned industry coalition proposal to transition the BRS and EBS spectrum to accommodate both new and old users.⁴ To alleviate concerns about current operators hampering the development of next generation systems, the coalition proposed specific criteria to limit the availability of “opt-out” protection to only those situations where the public interest would suffer substantial harm

regulated telecommunications providers. All of NTCA’s members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² MDS is now known as the “Broadband Radio Service” (BRS). ITFS is now known as “Educational Broadband Service” (EBS). The names are used interchangeably in this comment.

³ See, Petitions of The BRS Rural Advocacy Group, the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, on behalf of its clients, and Central Texas Communications, Inc.

⁴ See, “A Proposal for Revising the MDS and ITFS Regulatory Regime,” filed October 7, 2002 by the Wireless Communications Association International, Inc., the National ITFS Association and the Catholic Television Network (Coalition Proposal).

if required to transition to the new band plan. Although commenters generally supported the coalition proposal, the Commission determined that it would instead consider waivers of the transition rules on a case-by-case basis. The Commission determined that “adopting the Coalition’s proposal to allow MVPD licensees that meet the requirements to ‘opt-out’ of the transition needlessly complicates the transition process and is unnecessary to protect MVPD licensees, especially those that are currently using the entire BRS/EBS spectrum.”⁵

The Commission’s reasoning is incorrect. The waiver process complicates the transition process; it does not simplify it. The waiver process is uncertain and expensive. Unlike rules that provide licensees with long-term certainty about their status as a licensee and the ability to plan for the future, waivers are granted or not granted at the discretion of the regulators. Although the Commission provides guidelines about who would qualify for a waiver, guidelines are not measurable standards. Those that require licensees to explain, “why it cannot work within the transition rules we have adopted”⁶ provide licensees no meaningful predictor of whether or not a plea for relief will be granted. The waiver process also offers no certainty in time. As Central Texas points out, waivers may be filed at any time, even months following notice that a market will be transitioned. Any licensee seeking a waiver will be forced to spend precious resources in time and money gathering the information and hiring an attorney to file for the waiver, with no guarantee of success.

⁵ *Order*, ¶ 36.

⁶ *Order*, ¶ 77.

In contrast, the coalition proposal with an automatic “opt-out” respects the interests of a small number of BRS/EBS spectrum-rights holders while not overly impinging on the ability of proponents to transition nearby markets. Under the coalition proposal the only entities eligible to “opt-out” of a transition are rural MVPD operators “with a long-standing and demonstrated interest in compliance with the Commission’s rules.”⁷ The number of licenses affected and the potential for interference is minimal.

The Commission has failed to explain why an automatic “opt-out” provision is unnecessary to protect MVPDs. Under current rules, licensees with existing licenses with high-power video businesses are faced with a great deal of uncertainty as to whether or not they will be permitted to continue operations. The current transition rules offers relief to urban operators seeking to use the spectrum in new ways at the expense of long-standing MVPDs and their rural customers who depend on the video service the licensees provide, whereas the “opt-out” provision strikes a balance between the incompatible uses for the benefit of the public.

⁷ Petition of Central Texas, pp. 9-10.

For the foregoing reasons, NTCA urges the Commission to reconsider its decision not to adopt a mechanism by which qualified MVPDs would be permitted to “opt-out” of the BRS/EBS transition process.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ L. Marie Guillory
L. Marie Guillory
(703) 351-2021

By: /s/ Jill Canfield
Jill Canfield
(703) 351-2020

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
703 351-2000

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments in Support of Petitions for Reconsideration of the National Telecommunications Cooperative Association in WT Docket No. 03-66, RM-10586, WT Docket No. 03-67, MM Docket No. 97-217, WT Docket No. 02-68, RM-9718, WT Docket No. 00-230, FCC 04-135, was served on this 22nd day of February 2005 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

Gail Malloy

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554

Richard D. Rubino, Esq.
Robert M. Jackson, Esq.
Blooston, Mordkofsky, Dickens Duffy &
Prendergast

2120 L. Street, NW
Suite 300
Washington, D.C. 20037

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554

Stephen E. Coran, Esq.
Rini Coran, PC
1501 M Street, NW, Suite 1150
Washington, D.C. 20005

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554

John W. Jones, Jr. CEO/President
C&W Enterprises, Inc.
P.O. Box 5248
San Angelo, CA 76902

Best Copy and Printing, Inc.
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Edwin N. Lavergne
Fish & Richardson P.C.
1425 K Street, NW
Suite 1100
Washington, D.C. 20005

Todd D. Gray, Esq.
Dow Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, D.C. 20036

Donald L. Herman, Jr., Esq.
Rebecca L. Murphy, Esq.
Bennet & Bennet, PLLC
10 G Street, NE, 7th Floor
Washington, D.C. 20002

Cheryl A. Tritt, Esq.
Phuong N. Pham, Esq.
Morrison & Foerster LLP
2000 Pennsylvania Ave., NW
Suite 5500
Washington, D.C. 20006

Douglas J. Minster, Vice President
and General Counsel
Atlantic Tele-Network, Inc.
9719 Estate Thomas
St. Thomas
U.S. Virgin Island 00802

R. Gerard Salemme, Esq.
Nadja Sodos-Wallace
Clearwire Corporation
200 Pennsylvania Ave., NW
Suite 4000
Washington, D.C. 20006

Gary Nerlinger
Digital Broadcast Corporation
1661 Hunting Creek Drive
Alexandria, VA 22314

John de Celis
Grand Wireless Company
Michigan Operations
122 Ocean Road
Ocean City, NJ 08226

John B. Schwartz, Director
John Primeau, Director
The ITFS/2.5 GHz Mobile Wireless
Engineering & Development Alliance,
Inc.
P.O. Box 6060
Boulder, CO 80306

Donald J. Evans, Esq.
Paul J. Feldman, Esq.
Lee G. Petro, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Robert S. Foosaner, Senior Vice-
President- Government Affairs
Nextel Communications, Inc.
2001 Edmund Haley Drive
Reston, VA 20191

Howard J. Barr, Esq.
Womble Carlyle Sandridge & Rice,
PLLC
1401 Eye Street, NW
Seventh Floor
Washington, D.C. 20005

Rudolph J. Geist, Esq.
Evan D. Carb, Esq.
RJGLaw LLC
1010 Wayne Avenue
Suite 950
Silver Spring, MD 20910

John Ogren, President
Speednet, L.L.C.
843 Stag Ridge Road
Rochester, MI 40309

Luisa L. Lancetti, Vice President,
Wireless Regulatory Affairs
David Munson, Esq.
Sprint Corporation
401 9th Street, NW, Suite 400
Washington, D.C. 20004

Joseph A. Belisle, Esq.
Leibowitz & Associates
One SE Third Avenue – Suite 1450
Miami, FL 33131

Thomas Knippen, Vice President and
General Manager
W.A.T.C.H. TV Company
3225 West Elm Street
Lima, OH 45805

Paul J. Sinderbrand, Esq.
Robert D. Primosch
Nguyen T. Vu, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, D.C. 20037

John McLain
Wireless Direct Broadcast System
1661 Hunting Creek Drive
Alexandria, VA 22314